No. 92-1834

Supreme Court, U.S.
F I L E D
MAY 18 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT
OF THE
UNITED STATES OF AMERICA

OCTOBER TERM, 1992

EDGAR F. BRADLEY

PETITIONER

versus

STATE OF OHIO

RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

EDGAR F. BRADLEY
IN PROPRIA PERSONA (NOT PRO-SE)
3RD JUDICIAL DISTRICT
C/O 1659 WAPAK FISHER RD.
WAPAKONETA, OHIO STATE/TDC
(419) 738-8044

QUESTION PRESENTED FOR REVIEW

1. Whether an accused can be transported against his will to an adjoining county (in which there was no crime allegedly committed by the accused) and there be compelled to give his fingerprints pursuant to a local ordinance, in lieu of the fact that a court in that county has ruled that he cannot.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

1. Edgar F. Bradley - In Propria Persona
   Petitioner/Appellant

2. Sheriff Tom Hamman,
   Defendant/Appellee

3. State of Ohio,
   Respondent

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1992

EDGAR F. BRADLEY, PETITIONER

VS.

STATE OF OHIO, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Edgar F. Bradley, respectfully petitions the Supreme Court of the United States of America that a writ of certiorari be issued to review the judgment of the Ohio Fourth Appellate District Court of Appeals, entered in the above entitled case on October 8, 1992, and the related

judgment of the Supreme Court of Ohio, dated February 24, 1993, overruling Petitioner's Motion to certify the record to the Ohio Supreme Court for a review.

OPINIONS BELOW

The opinion of the Ohio 4th Appellate District Court, issued October 8, 1992, is reproduced in Appendix A.

The judgment filed in the Chillicothe Municipal Court, issued October 2, 1993, is reproduced in Appendix B.

The judgment filed in the Court of Common Pleas, Ross County, Ohio issued January 15, 1992 is reproduced in Appendix C.

The judgment filed in the Ohio Supreme Court, issued March 12, 1993, is reproduced in Appendix D.

JURISDICTION OF SUPREME COURT

The final judgment of the Ohio 4th Appellate District Court (Ross County, Ohio, Court of Appeals) was entered on October 8, 1992. The Entry denying a motion for an order directing the 4th Appellate District Court (Ross County, Ohio Court of Appeals) to certify its record was overruled on March 12, 1993.

The Supreme Court of the United States of America has jurisdiction to review the issues presented herein pursuant to 28 U.S.C. 1254 (1) and Rule 13 of the Rules of the Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth Amendment to the Constitution of the United States of America, particularly the highlighted section below, which provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury of the State and district wherein the crime shall have been committed,** which district shall have been previously ascertained by law,..."

This case also involves the Fifth Amendment to the Constitution of the United States of America, particularly the highlighted section below, which provides for the right to protection of personal property (fingerprints):

"No person shall be held to answer for a capital, or otherwise infamous crime, ...nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived**

of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

This case also involves the First Amendment to the Ohio Constitution, which is pursuant to the Fifth Amendment of the Constitution of the United States of America, and which also provides:

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

This case also involves the statutory provision of Ohio Revised Code § 109.60 (reproduced in its entirety in Appendix F) which is pursuant to both the 1st Amendment to the Ohio Constitution and to the 5th Amendment to the Constitution of the United States of America in regards to the protection of a certain kind of personal property, namely fingerprints, and which

provides in pertinent part:

"...Should any accused be found not guilty of the offense charged or a nolle sequi entered in any case, then the fingerprints and description shall be given to the accused upon his request..."

This case also involves the last section of Article I § 10 of the Ohio Constitution which is pursuant to the analagous provision in the 5th Amendment to the Constitution of the United States of America, before mentioned, and which also provides, in pertinent part:

"No person shall be twice put in jeopardy for the same offense."

This case also involves a conflict in judgment between the lower courts among the several states and the Supreme Court of the United States.

STATEMENT OF THE CASE

On May 24, 1991, Edgar F.Bradley, Petitioner, was stopped in Jackson County, Ohio by Trooper Nemeth of the Ohio State Highway Patrol and cited for 65 in a 55, resisting arrest, and failure to comply. Petitioner was then taken across county lines and incarcerated in Ross County Jail, Chillicothe, Ohio, which was serving as a guest facility for Jackson County jail because the Jackson facility was full on that Memorial Day Weekend.

Petitioner refused to answer booking questions or to voluntarily give his fingerprints in response to requests of the Chillicothe Jail staff, claiming that he had a right not to witness against himself by providing any evidence. Petitioner's fingerprints were NOT forcibly taken from

him.

26 days later, on June 19, 1991, Petitioner was arrested again, while on his way to a scheduled court appearance in connection with the first arrest, in Jackson County Courthouse by a Ross County Deputy Sheriff, on a complaint of Obstruction of an Official in the Performance of his Duty (Chillicothe Municipal Ordinance § 525.07 A&B, and Ohio Revised Code § 2921.31, reproduced in its entirety in Appendix E) The alleged obstruction allegedly occurred during Petitioner's stay as a guest prisoner in the Chillicothe Jail (Ross County) over the Memorial Day weekend, in connection with his arrest in Jackson County for allegedly resisting arrest. The Petitioner was then taken by the Ross County Deputy Sheriff from Jackson County, across County lines against Petitioners objections and without an

Attorney present, and then and there fingerprinted and locked up in the Chillicothe jail.

The alleged violation for which the Petitioner was incarcerated, (O.R.C. § 2921.31), took place in Ross County, not Jackson County. The original arrest (for resisting arrest) in Jackson County was a separate charge and occurred in a different county.

On August 29, 1991 Petitioner filed a Complaint for Replevin in Chillicothe Court of Common Pleas, Case No. 91-CI-254, Edgar F. Bradley v. Sheriff Tom Hamman, seeking a replevin of Plaintiff's fingerprints.

On September 20, 1991, Plaintiff Edgar F. Bradley filed a Motion for Order of Possession, with Affidavit in support, in the Chillicothe Common Pleas Court, Case No. 91-CI-254.

On October 2, 1991, Petitioner was tried in Chillicothe Municipal Court, Case No. 91-CRB-1247, on the alleged Obstruction charge, pursuant to his initial refusal to give fingerprints voluntarily. A judgement of acquittal was entered and Petitioner was found not guilty of the Charge of Obstructing an Official in the Performance of his Duty.

On January 16, 1992, a Journal Entry was filed in Chillicothe Common Pleas Court dismissing Petitioner's complaint for replevin of his fingerprints.

On January 31, 1992, a Notice of Appeal was filed by Petitioner in Fourth Appellate District Court of Appeals for Ross County, Ohio in the fingerprint Replevin case. Appeal case No. CA-1850 was assigned.

On March 19, 1992, Petitioner's Appeal Brief was filed, Case No. CA-1850.

On October 9, 1992, a Judgment Entry and Opinion were filed by the Court of Appeals for the 4th Appellate District of Ohio, Ross County, affirming the judgment appealed from. The judgment and opinion found that the arrest of May 24, 1991, which **DID NOT** involve the taking of fingerprints, resulted in a finding of guilty in a **JACKSON COUNTY** case, and the court ruled that the provisions of O.R.C. § 109.60, requiring return of fingerprints allegedly did not apply.

On October 30, 1992, Petitioner filed a Notice of Appeal with the Ohio Supreme Court.

On November 24, 1992, Petitioner filed a Memorandum in Support of Jurisdiction with the Ohio Supreme Court, Case No. 92-2861.

On February 24, 1993, the Supreme Court of Ohio filed an Entry overruling the

Motion for an Order directing the Court of Appeals for Ross County to certify its record, and denied jurisdiction of the case.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

A. INTRODUCTION

This case concerns an issue that has not been ruled upon before in the Supreme Court of the United States of America, and which is a question of gravity and general importance. The facts in the case demonstrate clearly that the lower courts were faced with a question of jurisdiction. The lower courts had to decide:

1. Whether it was lawful for the Petitioner to be arrested in Jackson County for an alleged violation in Ross County, and then forcibly transported against his will to Ross County, fingerprinted and booked in Ross County jail, when actually Petitioner did not commit any crime in Ross County for which fingerprints were required to be taken.

2. After a Ross County Municipal Court found the Petitioner not guilty of any crime in Ross County, a Ross County Common Pleas Court, the 4th Appellate District Court for Ross County, Ohio, and the Ohio Supreme Court, had to decide whether said Petitioner had a right to the return of his fingerprints in accordance with the provisions of Ohio Statute R.C. 109.60 which provided for the return of fingerprints upon a finding of not-guilty of the alleged offense **FOR WHICH THE PRINTS WERE TAKEN.**

3. In making their decisions the lower courts made serious errors regarding jurisdiction, in that their opinion presupposed that a provision in a statute regarding the outcome of a case extends to the outcome of a totally different case in a different county.

4. In making their decisions the lower

courts ignored the maxim that courts are bound by the plain meaning of statutory language, as provided in Griffin v. Oceanic Contractors, Inc., 458 US 564, 570, 73 LEd 2d 973, 980, 102 SCt. 3245 (1982) In making their decision the courts violated the substantive rights of the Petitioner, and created a conflict between decisions of the Supreme Court and the courts of the several states.

B. IT IS A VIOLATION OF THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES TO DECIDE A CASE IN ONE COUNTY BASED UPON AN ALLEGED CRIME IN A DIFFERENT COUNTY.

Petitioner was arrested in Jackson County, Ohio, for an alleged violation of a State Statute in Ross County, namely the alleged Obstruction of an Official in the Performance of his Duty, Ohio Revised Code

§ 2921.31 (Reproduced in its entirety in Appendix E). But when that cause came to trial in Municipal Court (Case No. 91-CRB-1247, City of Chillicothe v. Edgar F. Bradley) the Accused was found not guilty. A related action was commenced by the Accused in Common Pleas Court to replevin his fingerprints which were improperly taken. The Common Pleas Court refused to grant replevin, stating that the taking of fingerprints in connection with the Ross County charge of Obstruction was the culmination of a previous attempt to take fingerprints during incarceration in Ross County in connection with a Jackson County charge of Resisting Arrest (Case No. 91-CRB-575, State of Ohio v. Edgar F. Bradley). The Ross County Appellate Court (4th District Appellate Court of Ohio) in Case No. CA-1850, Edgar F. Bradley v. Sheriff Tom

Hamman, also denied the replevin based upon a finding of guilt in a previous charge of Resisting Arrest in Jackson County (Case No. 91-CRB-575). The Lower courts, in considering Petitioner's demand for the return of his fingerprints pursuant to the clear language of an Ohio Statute, violated Petitioner's 6th Amendment right to trial of a crime in the district wherein it is committed by basing their decision upon an alleged crime that transpired in a separate County.

Article I § 10 of the Ohio Constitution and the Fifth Amendment to the United States Constitution both provide, in pertinent part:

"...No person shall be twice put in jeopardy for the same offense..."

It is a violation of both the Ohio Constitution and the Constitution of the

United States of America for a State Appellate Court to deny the Petitioner a remedy provided in a State Statute (Ohio Revised Code § 109.60) to which he otherwise would be entitled as a matter of law, upon a finding of innocence in the charge for which the prints were taken, based upon the finding of guilt in a previous charge in a separate county. The Statutory remedy found in O.R.C. § 109.60 provides for a return of fingerprints when requested in cases for which Petitioner is found not guilty:

> "...should any accused befound not guilty OF THE OFFENSE CHARGED, then said fingerprints and description shall be given to the accused upon his request."
>
> (O.R.C. § 109.60, emphasis added.)

The pertinent part of O.R.C. § 109.60, quoted above, is pursuant to the Petitioner's substantive right to protection of personal property as provided in the 1st Amendment to the Ohio

Constitution:

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

(Ohio Constitution Article I: Bill of Rights, Right to freedom and protection of property.)

Statutorily, the Petitioner's previous case, Jackson County Municipal Court Case No. 91-CRB-575, is an unrelated case, and should not have been used to justify the denial of a statutory right.

The Fourth Appellate District Court of Appeals found that:,

"It is readily apparent that the sheriff initially sought to fingerprint appellant because appellant had been arrested on charges of speeding and resisting arrest."

(Opinion, Fourth Appellate District of Ohio, Case No. 92-CA-1850, Attached Exhibit "A"

But the fact is that the fingerprints were

taken pursuant to a charge of "Obstructing an Official in the Performance of His Duty" not "Resisting Arrest".

The mental state of the arresting officer, as a matter of law, has nothing to do with the taking of fingerprints. It is "twice jeopardy" for the Apellate Court to rule:

> "The fingerprints appellee obtained were the culmination of an arrest process initiated by the speeding and resisting arrest charges."
>
> (Opinion, Fourth Appellate District Court of Appeals, Ross County, Case No. CA-1850, attached Exhibit "A".)

It was made clear by the Chillicothe Municipal Court, in Case No. 91-CRB-1247, Obstructing Official Business, that the two cases were unrelated. The Chillicothe Municipal Court held that:

> "...the Court notes that there was authority to go ahead and take the fingerprints and go ahead and take the photographs whether the Defendant would cooperate or not. Now I would note that

we are not at all concerned with the lawfulness of the original arrest in this case...We're not really concerned with anything that happenned in Jackson County...we're concerned only with the booking procedure in this case and the issues presented by that..."

(Chillicothe Municipal Court Case: City of Chillicothe v. Edgar F. Bradley, 91-CRB-1247, Transcript of proceedings, page 55, lines 17-24 and page 56 lines 1-13, attached Exhibit "B".)

The different conclusions and conflict between the lower courts regarding the effect of the original arrest in Jackson County on the events which transpired in Ross County has culminated in a situation which can only be resolved by the Supreme Court of the United States.

The Municipal Court of Chillicothe rightfully concluded that the events transpiring in Jackson county did not affect anything in the Case No. 91-CRB-1247 (Obstruction of an Official). But the Common Pleas Court for Ross County, and

the Appellate Court for Ross County, and the Supreme Court of Ohio (for it's refusal to review the case) all concur that the speeding and resisting arrest charges tried in Jackson County did affect the trial for Obstruction in Ross County. Both Courts cannot be right. The Supreme Court of Ohio refuses to review the issue and resolve it. The Supreme Court of the United States is the Court of final review to settle the question. This conflict was pointed out in Petitioner's Memorandum in Support of Jurisdiction to the Ohio Supreme Court, but that Court refused to take jurisdiction of the case.

In addition, there is ample case law to support the Petitioner's assertion that fingerprints should not have been taken in Ross county for an alleged crime in Jackson County. No crime was committed in Ross

County for which fingerprints should have been taken.

In Davis v. Mississippi, 394 U.S. 721, 89 SCt. 1394, 22 LEd(2d) 676 (1969), it is clear that fingerprints cannot be taken in the absence of probable cause. Suspects cannot be rounded up and fingerprinted, and if they are, their fingerprints cannot be used as evidence against them because it is a violation of their rights. In Davis v. Mississippi the Supreme Court ruled that fingerprints are property:

> "...Fingerprint evidence is no exception to the rule that all evidence obtained by searches and seizures in violation of the Constitution is inadmissible in a State Court."

(Davis v. Mississippi, 394 U.S. 721, Pp. 723-724, 89 SCt. 1394, 22 LEd(2d) 676 (1969))

Obviously there is a conflict between decisions of State and Federal Courts on an issue of gravity and general importance,

namely the Constitutional right to be protected in one's personal property and effects.

Certainly there was an issue of whether or not Petitioner violated a State Statute when he refused to cooperate in giving his fingerprints, and that issue was resolved in Petitioner's favor in trial, **BUT NO CRIME HAD OCCURRED IN THAT COUNTY WHICH JUSTIFIED THE TAKING OF FINGERPRINTS IN THE FIRST PLACE**, and so the taking of fingerprints based upon an action in another county, tried by another court, was an unwarranted taking of private property. The principle involved here is one of twice jeopardy. The Petitioner feels he is being held twice accountable for his actions in Jackson County, once during trial in Jackson, and again in Ross County when the Appellate Court refused to give his fingerprints back,

and based that refusal upon a guilty verdict in a case in Jackson County, where no fingerprints were taken.

CERTIORARI SHOULD BE GRANTED TO RESOLVE CONFLICTS IN PRINCIPLE AMONG THE LOWER COURTS AND THE SUPREME COURT OF THE UNITED STATES.

The principle of twice-jeopardy applies to statutory remedies as well as convictions. Article I § 10 of the Ohio State Constitution states in part:

"...No person shall be twice put in jeopardy for the same offense."

It is a violation of Article I § 10 of the Ohio State Constitution for a statutory remedy (O.R.C. 109.60) which is pursuant to a substantive right of the Fifth Amendment of the Constitution of the United States of America and to the Ohio Constitution's right to protection of personal property, to be judicially or administratively disallowed

by a lower court based upon the finding of guilt in a previously decided and statutorily unrelated case, particularly when the lower courts in the same State have exercised a conflict in principle by ruling separately regarding the separateness of two cases.

CONCLUSION

WHEREFORE, Petitioner respectfully submits the following propositions of law for review by the Supreme Court of the United States, to wit:

1. That it is unlawful for the accused to be arrested by a Sheriff from a different county, transported over his objections with no Attorney present, and fingerprinted in a different county from that in which any crime has allegedly occurred.

2. That after a finding of not guilty in a case for which the fingerprints were

taken, the courts can lawfully refuse to return the fingerprints in contravention to a State Statute written pursuant to a substantive right which clearly requires the prints to be returned upon demand.

3. That in making their decisions the lower courts made serious errors regarding jurisdiction, in that their opinion presupposed that a provision in a statute regarding the outcome of a case extends to the outcome of a totally different case in a different county, in contravention to the substantive right of all accused to be tried in the county in which the offense occurred, and in violation of the accused's protection against twice jeopardy.

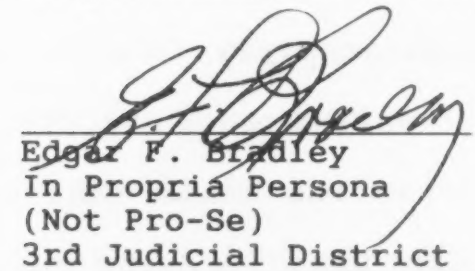
4. That in making their decision the lower courts ignored the maxim that courts are bound by the plain meaning of statutory language, as provided in Griffin v.

Oceanic Contractors, Inc., 458 U.S. 564, 570. 73 LEd. 2d 973, 980, 102 S.Ct. 3245 (1982).

5. That in making their decision the lower courts created a conflict between decisions of the Supreme Court of the United States and the State courts, conflicts, moreover, which address issues of gravity and general importance.

THEREFORE, CERTIORARI SHOULD BE GRANTED.

Respectfully Submitted,



Edgar F. Bradley
In Propria Persona
(Not Pro-Se)
3rd Judicial District
C/O 1659 Wapak Fisher Rd.
Wapakoneta, Ohio State/TDC

CERTIFICATE OF SERVICE

I, Edgar F. Bradley, hereby certify that I have mailed, by First Class U.S. Mail, postage prepaid, a true and correct copy of the foregoing Petition for Certiorari to Richard G. Ward, Prosecuting Attorney, 20 South Paint Street, Chillicothe, Ohio 45601, and to the Supreme Court of the United States, Office of the Clerk, #1, First Street, N.E., Washington D.C., 20543, this 17 day of May, 1993.

Edgar F. Bradley

AFFIDAVIT OF VERIFICATION

STATE OF OHIO)
) SS
COUNTY OF AUGLAIZE)

Edgar F. Bradley, being first duly sworn upon his affirmation, deposes and says that the above Petition for Writ of Certiorari is a true and correct relation of the facts.

Respectfully Submitted

Edgar F. Bradley
C/O 1659 Wapak Fisher Rd.
Wapakoneta, ohio State/TDC

Seal:

Subscribed and sworn to before me, a Notary Public, on this 10th day of May, 1993

Janet Burns
Notary Public, My Comm. expires: My Commission Expires: 8/19/97
8/19/97

Exhibit "A"

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT OF OHIO
ROSS COUNTY

EDGAR F. BRADLEY,	:	CASE NO. 92-CA-1850
PLAINTIFF-APPELLANT,	:	
-VS-	:	
SHERIFF THOMAS HAMMAN,	:	JUDGMENT ENTRY
DEFENDANT-APPELLEE	:	

The assignments of error properly before this court having been ruled upon as heretofore set forth, it is the order of this court that the judgment or final order herein appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Ross County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Exhibit "A"

Costs to be taxed in compliance with App.R. 24.

To all of which appellant, pro se, excepts.

Fred E. Jones, Presiding Judge

Richard N Koehler, Judge

James E. Walsh, Judge

Exhibit "A"

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT OF OHIO
ROSS COUNTY

EDGAR F. BRADLEY	:	CASE NO. 92-CA-1850
PLAINTIFF-APPELLANT	:	
-VS-	:	
SHERIFF THOMAS HAMMAN	:	OPINION
DEFENDANT-APPELLEE	:	

Edgar F. Bradley, 1695 Wapak Fisher Road, Wapakoneta, Ohio 45895, pro se

Richard G. Ward, Ross County Prosecuting Attorney, 20 S. Paint Street, Chillicothe, Ohio 45601, for Defendant-Appellee

JONES, P.J.

Appellant, Edgar F. Bradley, appeals a decision of the Ross County Court of Common Pleas dismissing appellant's replevin action in which he seeks the return of his fingerprints taken by appellee, Thomas Hamman, the Ross County Sheriff.

On May 28, 1991, appellee filed a

complaint charging appellant with obstructing official business under a Chillicothe city ordinance for refusing to be fingerprinted at the Ross County Jail on May 24, 1991. Appellant was at the jail as a result of having been arrested by the Ohio State Patrol in neighboring Jackson County on charges of speeding and resisting arrest for which he was subsequently convicted.[1]

After his initial refusal, appellant eventually yielded and provided his fingerprints.

---

1. The Jackson County charges have been the subject of a number of unsuccessful appellate actions by appellant. See State v. Bradley Nov. 18, 1991), Jackson App. No. CA 674, unreported; State ex rel. Bradley v. Esposito (Oct. 15, 1991), Jackson App. No. CA 678, unreported; and State ex rel. Bradley v. Esposito (Mar 5, 1992), Jackson App. No. CA 687, unreported.

Exhibit "A"

Appellant was acquitted of the obstructing official business charge in Chillicothe Municipal Court whereupon he commenced an action in common pleas court pursuant to R.C. Chapter 2737 to recover his fingerprints. The common pleas court sua sponte dismissed the complaint upon a determination that there was no wrongful detention of appellant's fingerprints since appellee had an administrative duty to maintain an identification record of every commitment to the county jail, which included identifying characteristics such as fingerprints.

On Appeal, appellant submits the following assignments of error for review:

Assignment of Error No. 1:

The Chillicothe Common Pleas Court, in Case nr. 91-CI-254 wrongfully applied an administrative ruling in equity in contradistinction to an action at law, thereby effectively ignoring the clear requirements of a statute. (Journal Entry,

Exhibit "A"
Jan. 15, 1992, Exhibit "A" of Appendix.)

Assignment of Error No. 2:

Factual evidence proving that fingerprints are property, that they are the property of the Appellant, and that he was found innocent of the misdemeanor of which hewas accused was presented to the lower court, but it nevertheless ignored the requirements of O.R.C. 109.60 in failing to grant the replevin.

Appellant's principal argument is that the trial court erred by failing to apply R.C. 109.60 and dismissing appellant's replevin action on the basis of Ohio Adm. Code 5120:1-8-01(D)(15), which requires each jail to maintain a booking and identification record of every commitment including other identifying characteristics It is generally recognized that peace officers have the power to fingerprint for identification purposes, and that the power to fingerprint for identification is reasonably incidental tothe sheriff's duty

to preserve the peace and prevent crime. United States v. Laub Baking Co., (N.D. Ohio 1968), 283 F.Supp. 217, 221.

R.C. 109.60 provides that upon the arrest of any person for any felony, on suspicion of any felony, or for a crime that is a misdemeanor on the first offense and a felony on subsequent offenses, the sheriff shall take that person's fingerprints.The statute further provides that:

"(s)hould any accused be found not guilty...the fingerprints...shall be given to the accused upon his request."

Appellant takes the position that his acquittal on the obstructing official business charge requires a return of his fingerprints under R.C. 109.60.

Appellant was charged with obstructing official business for refusing to be fingerprinted. The Chillicothe Municipal

Court correctly found appellant not guilty of this charge. See State v. Muldrow (1983), 10 Ohio Misc.2d 11. However, it was not the obstructing official business charges that originally prompted the sheriff to take appellant's fingerprints. It is readily apparent that the sheriff initially sought to fingerprint appellant because appellant had been arrested on charges of speeding and resisting arrest. It was appellant's refusal to be fingerprinted following his initial arrest that prompted the additional charge of obstructing official business.

Notwithstanding appellant's acquittal on the obstructing official business charge, he was found guilty in Jackson Municipal Court on the speeding and resisting arrest charges and those convictions have not been successfully challenged on appeal. The

fingerprints appellee obtained were the culmination of an arrest process initiated by the speeding and resisting arrest charges. We further find that although the aforementioned offenses are misdemeanors, appellee is nevertheless entitled to take appellant's fingerprints, not only under the provisions of R.C. 109.60, but also pursuant to the sheriff's inherent authority to preserve the peace and prevent crime. Laub, supra.

A replevin action is founded upon an unlawful detention of personal property, regardless of whether an unlawful taking has occurred. Jedlicka v. Good Mechanical Auto Co., (1984), 21 Ohio App.3d 19, 22; Black v. Cleveland, (1978), 58 Ohio App.2d 29, 32. We find that appellee was not only entitled to take appellant's fingerprints, but that

appellee's retention of the same does not violate R.C. 109.60 inasmuch as appellant was convicted of those misdemeanor offenses that initially prompted appellee to take appellant's fingerprints. Thus, there is no unlawful detention of personal property and the trial court correctly dismissed appellant's replevin action.

For the reasons set forth above, appellant's assignments of error are hereby overruled.

Judgment affirmed.

KOEHLER and WALSH, JJ., concur

APPENDIX B

Exhibit "B"

Case No. 91-CRB-1247
Doc. 29 Page 511

MUNICIPAL COURT
OF
CHILLICOTHE, OHIO

CITY OF CHILLICOTHE
VS
EDGAR F. BRADLEY
6532 DAWSON RD.
CINCINNATI, OHIO

Charge Obstruction of Official Business

Violation: 525.07 A&B

ENTRY - MISDEMEANOR

Defendant having plead or changed plea to:

NOT GUILTY AND FOUND NOT GUILTY

The court hereby imposes the following order and sentence:

DEFENDANT IS DISCHARGED

Exhibit "B"

STATE OF OHIO

COUNTY OF ROSS, to wit:

I, Vivien P. Pfeifer, Court Reporter for the Municipal Court of Chillicothe, Ross County, Ohio do hereby certify that the foregoing is a true, accurate, and complete transcript of the Trial by Court, in the matter of the City of Chillicothe versus Edgar F. Bradley, Case Number 91-CRB 1247, held before the Honorable David A. Cutright, Judge for the Chillicothe Municipal Court on October 2nd, 1991.

Given under my hand this the 29th day of January, 1992.

Vivien P. Pfeifer

My commission expires Oct. 24, 1995

Now, we've got some substantial questions here. The first question and probably one of the more basic questions is, we've got a complaint here which is filed under City Ordinance by Sergeant Woods of the Ross County Sheriff's Department. Now, the Court would take notice of Section 737.11 of the Revised Code which says, the police force of the Municipal Corporation shall preserve the peace and enforce all ordinances and legislative authority of the Municipal Corporation. The Chillicothe Police Department is the enforcing authority of City Ordinances. We also have -- an Attorney General's opinion, OAG 90-091, which holds basically that a Ross County--that the--a Sheriff and his Deputies are authorized under 311.07 of the Revised Code and

22 737.041 of the Revised Code, to enforce
23 Municipal--or to enforce the law within
Municipal Corporations and provide
24 police protection of Municipal

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1 Corporations if there is an appropriate
resolution of the Municipal Legislative
2 Authority. Normally, Municipal
3 Ordinances are not enforced by a
Sheriff. Now that is one of the first
4 basic questions in this case...
24 ...Problem number three is, that an

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1 additional element of the offense is,
under the Ordinance, that the refusal
2 hampers or impedes a public official in
3 the performance of his lawful duties.

Now, hamper or impede is defined in Ohio Jury Instructions 521.31(5), hamper or impede, actually has the intended effect of preventing, obstructing, or delaying an official act. To keep from moving freely, to bar, or to hinder. Now in this case the law inforcement agency did have the authority to use what force may have been necessary to take the fingerprints and to take the photographs. And that is, I think, clearly set forth in Schmerber v. California, 384 U.S. 757, which involved a much more invasive procedure, of taking a blood sample. Now the Schmerber case is still the law and does hold that physical evidence can be taken even to the extent of a blood sample without the consent of the

Defendant. And again, the cite on Schmerber is 384 US 757 and 86 SCt. 1826, decided 1966. So, the Court notes that there was authority to go ahead and take the fingerprints and go ahead and take the photographs whether the Defendant would cooperate or not. So, his refuasal, really need not have hampered or impeded anything. They could have gone ahead and done it. In fact, they did go ahead apparently and take the photographs without his consent. Now I would note that we are not at all

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concerned with the lawfulness of the original arrest in this case. The case of State v. Pembaur, which is 9 OS3rd

136, says absent bad faith on the part of a law enforcement officer and occupant of business premises cannot obstruct the officer in the discharge of his duty whether or not the Officer's actions are lawful under the circumstances. So, we don't have to be concerned about the original stop in Jackson County. We're not really concerned with anything that happenned in Jackson County, because even if the original arrest was not lawful, we're concerned only with the booking procedure in this case and the issues presented by that, we're not concerned at all with what happened in Jackson County by authority of State v. Pembaur case, which I have cited. But I very frankly, Mr. Hess have some serious

Exhibit "B"

15 problems with the three elements that I mentioned...

56

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4 ...So, the Court in this case, Mr.
5 Hess, just simply feels that it is my
6 duty under Rule 29(A) to enter a judgment of acquittal. And I do enter
7 a judgment of acquittal and find the Defendant not guilty.

58

APPENDIX C

Exhibit "C"

IN THE COURT OF COMMON PLEAS,

ROSS COUNTY, OHIO

EDGAR F. BRADLEY	;	
PLAINTIFF	;	CASE NO. 91-CI-254
VS	;	
SHERIFF TOM HAMMAN	;	JOURNAL ENTRY
DEFENDANT	;	

This matter originates as a complaint for replevin filed by the Plaintiff, Edgar F. Bradley, on August 29, 1991. The complaint alleges that plaintiff was coerced into giving up his fingerprints to employees of the Ross County Jail. In that plaintiff claims his fingerprints are now being wrongfully detained, plaintiff prays that they be returned to him. On September 12, 1991, pursuant to Ohio Revised Code

Section 2737.03, plaintiff filed a motion for order of possession. On October 10, 1991, the defendant, Sheriff Tom Hamman, filed a request for hearing, claiming rightful possession of the fingerprints.

Plaintiff brings this action to recover personal property wrongfully detained as provided for in Ohio Revised Code Sections 2737.01 to 2737.20. In this regard, 19 Ohio Jurisprudence 3d (1980) 9-10, Conversion and Replevin, Section 78 states:

> "The fact that wrongful detention is essential to an action of replevin is clear, and it is frequently declared that unlawful or wrongful detention constitutes the gist of the action, or that it is the wrongful detention of the property, regardless of the lawfulness or unlawfulness of the taking of the property which gives the right of action."

In support of the above proposition of law, see also the case of Jedlicka v. Good Mechanical Auto Co., (1984), 21 Ohio App.

3d 19.

In that wrongful detention is the crux of a replevin action, it must now be examined whether defendant had a right to take and hold fingerprints of the defendant. Chapter 5120:1-8 of the Ohio Administrative Code, titled "Minimum Standards for Full Service Jails," provides at section 5120:1-8-01 (D) 15 that a booking and identification record shall be made of every commitment and that it shall include identifying characteristics. Based upon the authority of the Ohio Administrative Code, we find defendant had the duty to maintain an identification record of every commitment into the jail, including identifying characteristics, which reasonably encompass fingerprints. The fingerprints plaintiff seeks return of are not being wrongfully detained by the

defendant, and thus, cannot be the basis of a replevin action.

accordingly, we find that on the face of the plaintiff's complaint, it appears beyond doubt that the plaintiff can prove no set of facts entitling him to recovery in replevin. The Court, on its own motion sua sponte, hereby dismisses plaintiff's complaint.

Exceptions to plaintiff.

Costs to plaintiff.

Nicholas H. Holmes, Jr.
JUDGE, Common Pleas Court
Ross County, Ohio
Courtroom #2

APPENDIX D

Exhibit "D"

THE SUPREME COURT OF OHIO

1993 TERM

To wit: February 24, 1993

EDGAR F. BRADLEY ; CASE NO. 92-2361

APPELLANT ;

V. ;

SHERIFF TOM HAMMAN ; E N T R Y

APPELLEE :

upon consideration of the motion for an order directing the Court of Appeals for Ross County to certify its record, it is ordered by the Court that said motion is overruled.

COSTS:

Motion Fee, $40.00, paid by Edgar F. Bradley.

(Court of Appeals No. 92CA1850)

THOMAS J. MOYER
CHIEF JUSTICE

APPENDIX E

Exhibit "E"

OHIO REVISED CODE
§ 2921.31
OBSTRUCTING OFFICIAL BUSINESS

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties.

(B) Whoever violates this section is guilty of obstructing official business, a misdemeanor of the second degree.

HISTORY: 134 v H511. Eff. 1-1-74

APPENDIX F

Exhibit "F"

OHIO REVISED CODE
§ 109.60

DUTY OF SHERIFFS AND CHIEFS OF POLICE TO TAKE FINGERPRINTS; REPORT.

The sheriffs of the several counties and the chiefs of police of cities shall immediately upon the arrest of any person for any felony, on suspicion of any felony, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused by found not guilty of the offense charged, then said fingerprints and description shall

be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance or a person arrested for a misdemeanor, unless the officers have reason to believe that such person is a past offender, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age,

except as provided in section 2151.31 of the Revised Code.

HISTORY: 130 v 12, § 1, Eff. 9-24-63.

No. 92-1834

In The

Supreme Court of the United States

October Term, 1992

EDGAR F. BRADLEY,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Ohio

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RICHARD G. WARD
Ross County Prosecuting Attorney
72 North Paint Street
Chillicothe, OH 45601
Telephone: (614) 775-5881
Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether replevin will lie for the return of fingerprints taken by an Ohio sheriff from a person lawfully arrested and formally charged with a crime and incidental to the sheriff's incarceration of said individual.

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No. 92-1834

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October Term, 1992

EDGAR F. BRADLEY,

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STATE OF OHIO,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Ohio

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF FACTS

In his Petition, Petitioner mischaracterizes the parties to these proceedings and the facts upon which the lower courts issued their decisions. He identifies himself as "Petitioner/Appellant," Sheriff Tom Hamman as "Defendant/Appellee," and the State of Ohio as "Respondent." In the proceedings below, Petitioner appealed the decision of the Ross County Court of Common Pleas dismissing his replevin action in which he sought the return of his fingerprints for Thomas Hamman, the Ross County Sheriff. The Court of Appeals for Ross County, Ohio, affirmed the judgment of the Common Pleas Court, and

the Ohio Supreme Court denied certiorari. Therefore, the appropriate parties to any further proceeding are Edgar Bradley as Petitioner and Sheriff Hamman as Respondent.

On May 24, 1991, Petitioner was at the Ross County, Ohio, Jail as a result of having been arrested by the Ohio State Highway Patrol in neighboring Jackson County, Ohio, on charges of speeding and resisting arrest for which he was subsequently convicted. On May 28, 1991, Sheriff Hamman filed a complaint charging Bradley with obstructing official business under a local ordinance when Bradley refused to be fingerprinted when brought to the Ross County Jail on the Jackson County charges. After his initial refusal, Bradley eventually relented and provided his fingerprints.

Bradley commenced the replevin action pursuant to Ohio Revised Code Chapter 2737 in Ross County Common Pleas Court to recover his fingerprints after he was acquitted of the obstructing official business charge in the Chillicothe Municipal Court, Chillicothe, Ohio.

The Common Pleas Court of Ross County, Ohio, dismissed the replevin complaint upon a determination that there was no wrongful detention of Bradley's fingerprints since the Sheriff had an administrative duty to maintain an identification record of every commitment to the county jail, including identifying characteristics such as fingerprints.

As indicated, the Court of Appeals affirmed, and the Ohio Supreme Court denied certiorari.

SUMMARY OF ARGUMENT

There is no question of law at issue that justifies the grant of a writ of certiorari in these proceedings. Sheriffs in Ohio have a common law power to fingerprint persons who have been lawfully arrested or charged with a crime and to maintain records of those fingerprints.

ARGUMENT

This case involves an appeal from the decision of the trial court in a replevin action. Under Ohio law, a replevin action is founded upon an unlawful detention of personal property. Where a person claims title to and the right to immediate possession of specific personal property, he has the right to recover possession of such property by court action. *Service Transport Co. vs. Matyas,* 159 Ohio St. 300 (1953). An action in replevin is founded upon an unlawful detention regardless of whether an unlawful taking has occurred. *Jedlicka vs. Good Mechanical Auto Co.,* 21 Ohio App. 3d 19 (1984).

In essence, Petitioner attempts to raise in this Court constitutional issues which are at best ancillary to the basic issue which is whether the Respondent Sheriff wrongfully detained Petitioner's fingerprints. Although the method of obtaining the fingerprints is not a proper issue in an Ohio replevin action, Respondent submits that he lawfully obtained them. Sheriffs in Ohio have a common law power to fingerprint persons who have been lawfully arrested or charged with a crime. Ohio law generally recognizes that peace officers have the power to fingerprint for identification purposes in that the power

to fingerprint for identification is reasonably incidental to the sheriff's duty to preserve the peace and prevent crime. *United States vs. Laub Baking Co.*, 283 F. Supp. 217 (N.D. Ohio 1968).

Petitioner argues that he is entitled to the return of his fingerprints by virtue of the provisions of Section 109.60 of the Ohio Revised Code which he claims requires the return of fingerprints upon a finding of not guilty. Revised Code Section 109.60 is inapplicable to Petitioner's case for two reasons. First, the section applies only to persons arrested for a felony or a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. In this case, the Respondent Sheriff initially sought to fingerprint him subsequent to his arrest for speeding and resisting arrest. Under Ohio law, speeding and resisting arrest are not felonies or crimes constituting a misdemeanor on the first offense and a felony on subsequent offenses. Obviously, Revised Code Section 109.60 is inapplicable.

Second, Petitioner was convicted on the speeding and resisting arrest charges. Again, Revised Code Section 109.60 is inapplicable to persons convicted of the crimes charged.

In separate proceedings, Petitioner was acquitted of obstruction of official business, a charge which arose out of his initial refusal to be printed in conjunction with his arrest for speeding and resisting arrest. Petitioner was not entitled to the return of his fingerprints upon this acquittal for reason that it was his arrest for speeding and resisting arrest that initially prompted Respondent to take and detain his fingerprints.

CONCLUSION

It is respectfully submitted that Petitioner has failed to establish any reason why the writ should be granted. The decision below did not involve questions of federal law which have not been, but should be, settled by this Court, nor did it decide a federal question in a way that conflicts with applicable decisions of this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

RICHARD G. WARD
Ross County Prosecuting Attorney
72 North Paint Street
Chillicothe, OH 45601
Telephone: (614) 775-5881

APPENDIX

109.60 Duty of sheriffs and chiefs of police to take fingerprints; report; exception

The sheriffs of the several counties and the chiefs of police of cities shall immediately upon the arrest of any person for any felony, on suspicion of any felony, or for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward them, together with such other descriptions as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused be found not guilty of the offense charged or a nolle prosequi entered in any case, then the fingerprints and description shall be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice or wanted by any jurisdiction in this or any other state or the United States or a foreign country for any offense, he shall at once inform the arresting officer of such fact and give appropriate notice to the proper authorities in the jurisdiction in which such person is wanted, or, if such jurisdiction is a foreign country, give appropriate notice to federal authorities for transmission to such foreign country. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance unless the officers have reason to believe that

such person is a past offender, or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age, except as provided in section 2151.313 of the Revised Code.